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1133 California Way
Longview, Washington 98632

Managing Agent
Wayron, LLC
P.O. Box 1159
Longview, Washington 98632
EPA Region 10
Office of the Regional Administrator

ORC

**Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND
REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION PLAN**

Dear Managing Agent:

This letter is submitted on behalf of Columbia Riverkeeper, 111 Third Street, Hood River, Oregon 97031, (541) 387-3030. Any response or correspondence related to this matter should be directed to Brian A. Knutsen at the address provided below. This letter is to provide you with sixty days notice of Columbia Riverkeeper's intent to file a citizen suit against Wayron, LLC ("Wayron") ("Wayron") under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below. This letter is also a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by Wayron's National Pollution Discharge Elimination System ("NPDES") permit.

The Washington Department of Ecology ("Ecology") granted Wayron coverage under Washington's Industrial Stormwater General Permit ("ISGP") issued on December 3, 2014, effective January 2, 2015, under NPDES Permit No. WAR-001873 (the "2015 Permit"). Ecology granted Wayron coverage under the previous iteration of the ISGP issued on October 21, 2009, effective January 1, 2010, modified effective July 1, 2012, and which expired on December 31, 2014, under the same NPDES permit No. WAR-001873 (the "2010 Permit"). Wayron has violated and continues to violate the terms and conditions of the 2010 Permit and 2015 Permit (collectively, the "Permits") with respect to operations of, and discharges of stormwater and pollutants from, its facility located at or near 1133 California Way, Longview, Washington 98632 (the "facility"). The facility subject to this notice includes any contiguous or adjacent properties owned or operated by Wayron.

**I. COLUMBIA RIVERKEEPER'S COMMITMENT TO PROTECTING A
FISHABLE AND SWIMMABLE COLUMBIA RIVER.**

Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper is a non-profit organization with members who live, recreate, and work throughout the Columbia River Basin, including near and downstream of Wayron's facility.

Threats facing the Columbia River are severe by any measure. See *Columbia River Basin State of River Report for Toxics*, Environmental Protection Agency, Region 10 (January 2009), available online at: <http://yosemite.epa.gov/r10/ecocomm.nsf/Columbia/SoRR/>. In fact, the vast majority of rivers and streams in Washington fail to meet basic state water quality standards for pollutants such as toxics and temperature. See *State of Washington 303(d) List*, available online at: <http://www.ecy.wa.gov/programs/wq/303d/index.html>. Water quality standards are designed to protect designated uses, including aquatic life, fishing, swimming, and drinking water.

Stormwater runoff is “one of the great challenges of water pollution control” and “is a principal contributor to water quality impairment of waterbodies nationwide.” See *Urban Stormwater Management in the United States*, National Research Council (Oct. 15, 2008), available online at: http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf. When rain sends runoff across city streets, construction projects, and industrial facilities, the water picks up contaminants that are drained into waterways such as the Columbia River and its tributaries. These toxics accumulate in local fish, wildlife, and birds. To address this leading cause of water quality impairment, Columbia Riverkeeper invests significant time and resources in reducing pollutant loads from industrial, municipal, and construction stormwater sources.

This Notice of Intent to Sue Wayron is part of Columbia Riverkeeper’s effort to improve water quality in the Columbia River Basin for purposes including swimming, habitat quality, and subsistence, recreational, and commercial fishing. Columbia Riverkeeper has serious concerns about the impacts of Wayron’s operations and industrial stormwater discharges on the Columbia River. As discussed below, Wayron has failed to complete and implement corrective actions and to prepare and implement a compliant SWPPP. Wayron’s operations and stormwater discharges degrade water quality in the Columbia River Basin and place the health and well-being of all who use the Columbia at risk.

II. COMPLIANCE WITH STANDARDS.

A. Violations of Water Quality Standards.

Condition S10.A of the Permits prohibits discharges that cause or contribute to violations of water quality standards. Water quality standards are the foundation of the CWA and Washington’s efforts to protect clean water. In particular, water quality standards represent the United States Environmental Protection Agency (“EPA”) and Ecology’s determinations, based on scientific studies, of the thresholds at which pollution start to cause significant adverse effects to fish or other beneficial uses. For each water body in Washington, Ecology designates the “beneficial uses” that must be protected through the adoption of water quality standards.

A discharger must comply with both narrative and numeric water quality standards. WAC 173-201A-010; WAC 173-201A-510 (“No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter.”). Narrative water quality standards provide legal mandates that supplement the numeric standards. Furthermore, narrative water quality standards apply with equal force, even when Ecology has established numeric water quality standards. Specifically, Condition S10.A of the

Permits requires that Wayron's discharges not cause or contribute to violations of Washington State's water quality standards.

Wayron discharges stormwater to the Columbia River and to the Longview Ditches/Diking System via stormwater conveyances. Wayron discharges stormwater with elevated levels of zinc, petroleum hydrocarbons, and turbidity as indicated in Table 1 below. Discharges of stormwater from the facility cause and/or contribute to violations of water quality standards for zinc, turbidity, and aesthetic criteria and have occurred each and every day during the last five years on which there was 0.1 inch or more of precipitation at the facility, and continue to occur. These water quality standards include those set forth in WAC 173-201A-240, and -260(2).

Table 1 Stormwater Sampling Results Reported by Wayron									
Monitoring Quarter	DP	Turbidity BM: 25 NTU	pH BM: 5-9 S.U.	Zinc BM: 117 µg/L	Copper BM: 14 µg/L	Oil Sheen BM: no	Fecal #/100mL	Lead BM: 81.6 µg/L	Petrol. Hydro. BM: 10 mg/L
1Q 2010	1								
	2								
2Q 2010	1								
	2								
3Q 2010	1								
	2								
4Q 2010	1	0.92	6.75	121	BD	No	NA	BD	NA
	2	0.52	6.78	120	BD	No	NA	BD	NA
1Q 2011	1	0.52 / 3.42	6.78 / 6.75	120 / 96.3	0 / 0	No / No	NA / NA	0 / 0	NA / NA
	2	0.92 / 2.92	6.75 / 6.55	121 / 88.7	0 / 0	No / No	NA / NA	0 / 0	NA / NA
2Q 2011	1	1.04	6.78	103	0	No	NA	0	NA
	2	1.47	6.92	111	0	No	NA	0	NA
3Q 2011	1								
	2								
4Q 2011	1	3.58	NA	223	NA	NA	NA	NA	NA
	2	3.24	NA	290	7.0	NA	NA	20	NA
1Q 2012	1	1.27	6.80	83.2	BD	No	NA	BD	NA
	2	0.99	6.71	44.7	BD	No	NA	BD	NA
2Q 2012	1	0.6	7.05	48.5	0	No	NA	0	NA
	2	0.29	6.55	45.8	0	No	NA	0	NA
3Q 2012	1								
	2								
4Q 2012	1	25	7.0	376	0	No	NA	0	NA
	2	0.31	7.11	474	3.3	No	NA	0	NA
1Q 2013	1	0.79	7.13	76.9	BD	No	NA	BD	NA
	2	1.17	6.95	87.1	BD	No	NA	BD	NA
2Q 2013	1								
	2								
3Q 2013	1	0.28	7.41	198	1.1	No	BD	0.12	5.6
	2	0.43	7.66	347	1.1	No	BD	1.07	7.2
4Q 2013	1								

	2								
1Q 2014	1	0.53	7.47	72.0	1.0	No	NA	0.35	NA
	2	0.79	7.55	96.4	1.8	No	NA	2.52	NA
2Q 2014	1	1.2	7.3	91.2	0.9	NA	NA	0.53	NA
	2	1.2	7.4	142	0.9	NA	NA	1.07	NA
3Q 2014	1								
	2								
4Q 2014	1								
	2								
1Q 2015	1	0.35	6.88	98	0.72	BD	NA	0.110	NA
	2	0.54	6.87	142	0.71	BD	NA	0.522	NA
2Q 2015	1	7.82	6.50	2200	50.5	BD	130	1.52	2400
	2	12.5	6.77	2460	57.4	BD	79	14.8	2900
3Q 2015	1								
	2								
4Q 2015	1	1.19	6.56	1180	1.38	No	2540	0.169	0
	2	0.82	6.78	962	1.70	No	10	0.459	0
1Q 2016	1	1.61	7.20	609	3.76	No	NA	2.38	260
	2	59	6.42	474	4.21	No	8	0.129	310
2Q2016	1	1.54	6.75	623	9.60	No	2.0	0.244	610
	2	2.20	7.07	758	9.58	No	2.0	1.31	380
3Q2016									

“DP” stands for “discharge point.”

“BM” stands for “benchmark” and the BM values listed in Table 1 are the benchmark levels established in the Permits. Values in bold indicate benchmark exceedances.

“NA” stands for “no analysis” and indicates that a monitoring result was not provided.

“BD” stands for “below detection” and indicates that Wayron reported that the concentration was below the detection level of the laboratory.

B. Compliance with Standards.

Condition S10.C of the Permits requires Wayron to apply all known and reasonable methods of prevention, control and treatment (“AKART”) to all discharges, including preparing and implementing an adequate SWPPP and best management practices (“BMPs”). Wayron has violated and continues to violate these conditions by failing to apply AKART to its discharges by, among other things, failing to implement an adequate SWPPP and BMPs as evidenced by the elevated levels of pollutants in its discharge. These violations have occurred on each and every day during the last five years and continue to occur every day.

Condition S1.A of the Permits require that all discharges and activities authorized be consistent with the terms and conditions of the permit. Wayron has violated this condition by discharging and acting inconsistent with the conditions of the Permits as described in this Notice of Intent to Sue.

III. STORMWATER POLLUTION PREVENTION PLAN VIOLATIONS.

Columbia Riverkeeper hereby provides notice, based upon information and belief, that Wayron has not developed and implemented a SWPPP that complies with the requirements of

the Permits. The publically available records, including Ecology's October 2016, inspection report, indicate that Wayron has not prepared and implemented a SWPPP that meets the requirements of the Permits. Further, Wayron's violations of the Permits described herein are evidence of Wayron's ongoing failure to prepare and implement a SWPPP that includes adequate BMPs and that otherwise includes all of the required SWPPP components. In the following section, Columbia Riverkeeper provides notice of SWPPP violations on information and belief. These violations have occurred on each and every day during the last five years and continue to occur every day.

Condition S3.A.1 of the Permits requires Wayron to develop and implement a SWPPP as specified in the Permits. Condition S3.A.2 of the Permits requires the SWPPP to specify BMPs necessary to provide AKART and ensure that discharges do not cause or contribute to violations of water quality standards. On information and belief, Wayron has violated these requirements of the Permits each and every day during the last five years and continues to violate them as it has failed to prepare and/or implement a SWPPP that includes AKART and BMPs necessary to comply with state water quality standards.

Condition S3.A of the Permits requires Wayron to have and implement a SWPPP that is consistent with Permit requirements, fully implemented as directed by Permit conditions, and updated as necessary to maintain compliance with Permit conditions. On information and belief, Wayron has violated these requirements of the Permits each and every day during the last five years and continues to violate them because its SWPPP is not consistent with Permit requirements, is not fully implemented, and has not been updated as necessary.

The SWPPP fails to satisfy the requirements of Condition S3 of the Permits because it does not adequately describe BMPs. Condition S3.B.4 of the Permits requires that the SWPPP include a description of the BMPs that are necessary for the facility to eliminate or reduce the potential to contaminate stormwater. Condition S3.B.4 of the 2015 Permit requires that the SWPPP detail how and where the selected BMPs will be implemented. Condition S3.A.3 of the Permits requires that the SWPPP include BMPs consistent with approved stormwater technical manuals or document how stormwater BMPs included in the SWPPP are demonstratively equivalent to the practices contained in the approved stormwater technical manuals, including the proper selection, implementation, and maintenance of all applicable and appropriate BMPs. Wayron's SWPPP does not comply with these requirements because it does not adequately describe and explain in detail the BMPs selected, does not include BMPs consistent with approved stormwater technical manuals, and does not include BMPs that are demonstratively equivalent to such BMPs with documentation of BMP adequacy.

Wayron's SWPPP fails to satisfy the requirements of Condition S3.B.2 of the Permits because it fails to include a facility assessment. The SWPPP fails to include an adequate facility assessment because it does not describe the industrial activities conducted at the site, the general layout of the facility including buildings and storage of raw materials, the flow of goods and materials through the facility, the regular business hours, and the seasonal variations in business hours or in industrial activities.

Wayron's SWPPP fails to satisfy the requirements of Condition S3.B.1 of the Permits because it does not include a site map that identifies significant features, the stormwater drainage and discharge structures, the stormwater drainage areas for each stormwater discharge point off-site, a unique identifying number for each discharge point, each sampling location with a unique identifying number, paved areas and buildings, areas of pollutant contact associated with specific industrial activities, conditionally approved non-stormwater discharges, surface water locations, areas of existing and potential soil erosion, vehicle maintenance areas, and lands and waters adjacent to the site that may be helpful in identifying discharge points or drainage routes.

Wayron's SWPPP fails to comply with Condition S3.B.2.b of the Permits because it does not include an inventory of industrial activities that identifies all areas associated with industrial activities that have been or may potentially be sources of pollutants. The SWPPP does not identify all areas associated with outdoor storage of materials or products, outdoor manufacturing and processing, onsite dust or particulate generating processes, on-site waste treatment, storage, or disposal, vehicle and equipment fueling, maintenance, and/or cleaning, roofs or other surfaces exposed to air emissions from a manufacturing building or a process area, and roofs or other surfaces composed of materials that may be mobilized by stormwater as required by these Permit conditions.

Wayron's SWPPP does not comply with Condition S3.B.2.c of the Permits because it does not include an adequate inventory of materials. The SWPPP does not include an inventory of materials that lists the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that could result in stormwater pollution, a short narrative for each material describing the potential for the pollutants to be present in stormwater discharge that is updated when data becomes available to verify the presence or absence of the pollutants, a narrative description of any potential sources of pollutants from past activities, materials and spills that were previously handled, treated, stored, or disposed of in a manner to allow ongoing exposure to stormwater as required. The SWPPP does not include the method and location of on-site storage or disposal of such materials and a list of significant spills and significant leaks of toxic or hazardous pollutants as these Permit conditions require.

Wayron's SWPPP does not comply with Condition S3.B.3 of the Permits because it does not identify specific individuals by name or title whose responsibilities include SWPPP development, implementation, maintenance and modification.

Condition S3.B.4 of the Permits requires that permittees include in their SWPPPs and implement certain mandatory BMPs unless site conditions render the BMP unnecessary, infeasible, or an alternative and equally effective BMP are provided. Wayron is in violation of this requirement because it has failed to include in its SWPPP and implement the mandatory BMPs of the Permits.

Wayron's SWPPP does not comply with Condition S3.B.4.b.i of the Permits because it does not include required operational source control BMPs in the following categories: good housekeeping (including definition of ongoing maintenance and cleanup of areas that may contribute pollutants to stormwater discharges, and a schedule/frequency for each housekeeping task); preventive maintenance (including BMPs to inspect and maintain stormwater drainage and

treatment facilities, source controls, treatment systems, and plant equipment and systems, and the schedule/frequency for each task); spill prevention and emergency cleanup plan (including BMPs to prevent spills that can contaminate stormwater, for material handling procedures, storage requirements, cleanup equipment and procedures, and spill logs); employee training (including an overview of what is in the SWPPP, how employees make a difference in complying with the SWPPP, spill response procedures, good housekeeping, maintenance requirements, material management practices, how training will be conducted, the frequency/schedule of training, and a log of the dates on which specific employees received training); inspections and recordkeeping (including documentation of procedures to ensure compliance with permit requirements for inspections and recordkeeping, including identification of personnel who conduct inspections, provision of a tracking or follow-up procedure to ensure that a report is prepared and appropriate action taken in response to visual monitoring, definition of how Wayron will comply with signature and record retention requirements, certification of compliance with the SWPPP and Permit, and all inspection reports completed by Wayron).

Wayron's SWPPP does not comply with Condition S3.B.4.b.i.7 of the Permits because it does not include measures to identify and eliminate the discharge of process wastewater, domestic wastewater, noncontact cooling water, and other illicit discharges to stormwater sewers, or to surface waters and ground waters of the state.

Wayron's SWPPP does not comply with Condition S3.B.4.b.ii of the Permits because it does not include required structural source control BMPs to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff. Wayron's SWPPP does not comply with Condition S3.B.4.b.iii of the Permits because it does not include treatment BMPs as required.

Wayron's SWPPP fails to comply with Condition S3.B.4.b.v of the Permits because it does not include BMPs to prevent the erosion of soils or other earthen materials and prevent off-site sedimentation and violations of water quality standards.

Wayron's SWPPP fails to satisfy the requirements of Condition S3.B.5 of the Permits because it fails to include a stormwater sampling plan as required. The SWPPP does not include a sampling plan that identifies points of discharge to surface waters, storm sewers, or discrete ground water infiltration locations, documents why each discharge point is not sampled, identifies each sampling point by its unique identifying number, identifies staff responsible for conducting stormwater sampling, specifies procedures for sampling collection and handling, specifies procedures for sending samples to the a laboratory, identifies parameters for analysis, holding times and preservatives, laboratory quantization levels, and analytical methods, and that specifies the procedure for submitting the results to Ecology.

Wayron's SWPPP fails to comply with the requirements of Condition S6.C.1 of the Permits because it does not include the mandatory BMPs required for facilities that discharge to waters that are designated as impaired for fecal coliform. The SWPPP does not use AKART methods to prevent rodents, birds, and other animals from feeding/nesting/roosting at the facility; the SWPPP does not include at least one annual dry season inspection of the stormwater system to identify and eliminate sanitary sewer cross-connections; the SWPPP does not include

structural source control BMPs to address on-site activities and sources that could cause bacterial contamination; and the SWPPP does not include operational source control BMPs to prevent bacterial contamination from known sources of fecal coliform bacteria.

IV. MONITORING AND REPORTING VIOLATIONS.

A. Failure to Collect Quarterly Samples.

Condition S4.B of the Permits requires Wayron to collect a sample of its stormwater discharge once during every calendar quarter. Conditions S3.B.5.b and S4.B.2.c of the Permits require Wayron to collect stormwater samples at each distinct point of discharge offsite except for substantially identical outfalls, in which case only one of the substantially identical outfalls must be sampled. These conditions set forth sample collection criteria, but require the collection of a sample even if the criteria cannot be met.

Wayron violated these requirements by failing to collect stormwater samples in compliance with these requirements from any of its discharge points during the following calendar quarters: the third quarter of 2012, the second quarter of 2013, the fourth quarter of 2013, the third quarter of 2014, the fourth quarter of 2014, the third quarter of 2015, and the third quarter of 2016.

Wayron has further violated and continues to violate these conditions because it does not sample each distinct point of discharge off-site each quarter. These violations have occurred and continue to occur each and every quarter since the fourth quarter of 2011 that Wayron was and is required to sample its stormwater discharges, including the quarters in which it collected stormwater discharge samples from some, but not all, points of discharge. These violations will continue until Wayron commences monitoring all distinct points of discharge.

B. Failure to Analyze Quarterly Samples.

Conditions S5.A.1, S5.B.1, and S6 of the Permits require Wayron to analyze stormwater samples collected quarterly for turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform. Wayron violated these conditions by failing to analyze stormwater samples as indicated in Table 2 below:

Table 2 Pollutant Parameters Not Analyzed	
Monitoring Quarter	Parameters Not Analyzed
4 th Quarter 2011	pH, total copper (DP 1), oil sheen, total lead (DP 1), petroleum hydrocarbons, and fecal coliform
1 st Quarter 2012	Petroleum hydrocarbons and fecal coliform
2 nd Quarter 2012	Petroleum hydrocarbons and fecal coliform
3 rd Quarter 2012	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform
4 th Quarter 2012	Petroleum hydrocarbons and fecal coliform

1 st Quarter 2013	Petroleum hydrocarbons and fecal coliform
2 nd Quarter 2013	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform
4 th Quarter 2013	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform
1 st Quarter 2014	Petroleum hydrocarbons and fecal coliform
2 nd Quarter 2014	Oil sheen, petroleum hydrocarbons, and fecal coliform
3 rd Quarter 2014	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform
4 th Quarter 2014	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform
1 st Quarter 2015	Petroleum hydrocarbons and fecal coliform
3 rd Quarter 2015	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform
1 st Quarter 2016	Fecal coliform (DP 1)
3 rd Quarter 2016	Turbidity, pH, total copper, total zinc, oil sheen, total lead, total petroleum hydrocarbons, and fecal coliform

“DP” stands for “discharge point” and indicates that Wayron failed to analyze the pollutant parameter for only the discharge point specified.

C. Failure to Comply with Visual Monitoring Requirements.

Condition S7.A of the Permits requires that monthly visual inspections be conducted at the facility by qualified personnel. Each inspection is to include observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged, observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharges, observations for the presence of illicit discharges, a verification that the descriptions of potential pollutant sources required by the permit are accurate, a verification that the site map in the SWPPP reflects current conditions, and an assessment of all BMPs that have been implemented (noting the effectiveness of the BMPs inspected, the locations of BMPs that need maintenance, the reason maintenance is needed and a schedule for maintenance, and locations where additional or different BMPs are needed).

Condition S7.C of the Permits requires that Wayron record the results of each inspection in an inspection report or checklist that is maintained on-site and that documents the observations, verifications, and assessments required. The report/checklist must include the time and date of the inspection, the locations inspected, a statement that, in the judgment of the person conducting the inspection and the responsible corporate officer, the facility is either in compliance or out of compliance with the SWPPP and the Permit, a summary report and schedule of implementation of the remedial actions that Wayron plans to take if the site inspection indicates that the facility is out of compliance, the name, title, signature and certification of the person conducting the facility inspection, and a certification and signature of the responsible corporate officer or a duly authorized representative.

Wayron is in violation of these requirements of Condition S7 of the Permits because, during the last five years, it has failed to conduct each of the requisite visual monitoring and

inspections, failed to prepare and maintain the requisite inspection reports or checklists, and failed to make the requisite certifications and summaries.

V. CORRECTIVE ACTION VIOLATIONS.

A. Violations of the Level One Requirements of the Permits.

Condition S8.B of the Permits requires Wayron take specified actions, called a "Level One Corrective Action," each time quarterly stormwater sample results exceed a benchmark value or are outside the benchmark range for pH. Condition S8.A of the 2015 Permit requires that Wayron implement any Level One Corrective Action required by the 2010 Permit.

For a Level One Corrective action, Condition S8.B.1.a of the Permits requires Wayron to "[c]onduct an inspection to investigate the cause" of the benchmark exceedance. Additionally, for a Level One Corrective Action, Condition S8.B of the Permits requires Wayron to: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits and contains the correct BMPs from the applicable Stormwater Management Manual; (2) make appropriate revisions to the SWPPP to include additional operational source control BMPs with the goal of achieving the applicable benchmark values in future discharges and sign and certify the revised SWPPP in accordance with the Permits; and (3) summarize the Level One Corrective Action in the Annual Report required under Condition S9.B of the Permits. Condition S8.B of the Permits requires Wayron to implement the revised SWPPP as soon as possible, and no later than the DMR due date for the quarter the benchmark was exceeded.

Conditions S5.A and S5.B and Tables 2 and 3 of the Permits establish the following applicable benchmarks: turbidity 25 NTU; pH 5 – 9 S.U.; no visible oil sheen; total copper 14 µg/L; total zinc 117 µg/L; total lead 81.6 µg/L; and petroleum hydrocarbons 10 mg/L.

Wayron has violated the requirements of the Permits described above by failing to conduct a Level One Corrective Action in accordance with permit conditions, including the required investigation, the required review, revision and certification of the SWPPP, the required implementation of additional BMPs, and the required summarization in the annual report each time during the last five years that quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH, including the benchmark excursions listed in Table 1 in Section II.A of this letter that occurred during that period.

These benchmark excursions are based upon information currently available to Columbia Riverkeeper from Ecology's publicly available records. Columbia Riverkeeper provides notice of its intent to sue Wayron for failing to comply with all of the Level One Corrective Action requirements described above each time during the last five years that its quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH.

B. Violations of the Level Two Requirements of the Permits.

Condition S8.C of the Permits requires Wayron to take specified actions, called a "Level Two Corrective Action," each time quarterly stormwater sample results exceed an applicable

benchmark value or are outside the benchmark range for pH for any two quarters during a calendar year. Condition S8.A of the 2015 Permit requires that Wayron implement any Level Two Corrective Action required by the 2010 Permit.

As described by Condition S8.C of the Permits, a Level Two Corrective Action requires Wayron: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional structural source control BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and sign and certify the revised SWPPP in accordance with Condition S3 of the Permits; and (3) summarize the Level Two Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits. Condition S8.C.4 of the Permits requires that Wayron implement the revised SWPPP according to Condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than August 31st of the following year.

The Permits establish the benchmarks applicable to Wayron described in Section V.A of this Notice of Intent to Sue.

Wayron has violated the requirements of the Permits described above by failing to conduct a Level Two Corrective Action in accordance with permit conditions, including the required review, revision and certification of the SWPPP, the required implementation of additional BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge), including additional structural source control BMPs, and the required summarization in the annual report each time since and including 2011, that Wayron's quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any two quarters during a calendar year.

The benchmark excursions identified in Table 1 in Section II.A of this letter are based upon information currently available to Riverkeeper from Ecology's publicly available records. Riverkeeper provides notice of its intent to sue Wayron for failing to comply with all of the Level Two Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value or were outside the benchmark range for pH for any two quarters during a calendar year, including any such exceedances that are not reflected in Table 1 above, since and including 2011.

Condition S8.C.4.e of the 2015 Permit states "For the year following the calendar year the Permittee triggered a Level 2 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions." *See also* 2010 Permit, Condition S8.C.4.d (same). These Conditions do not waive Wayron's duty to prepare Level Two Corrective Actions because Wayron failed to develop and implement Level Two Corrective Actions pursuant to Condition S8.C of the Permits.

C. Violations of the Level Three Requirements of the Permits.

Condition S8.D of the Permits requires Wayron take specified actions, called a "Level Three Corrective Action," each time quarterly stormwater sample results exceed an applicable

benchmark value or are outside the benchmark range for pH for any three quarters during a calendar year. Condition S8.A of the 2015 Permit requires that Wayron implement any Level Three Corrective Action required by the 2010 Permit.

As described by Condition S8.D of the Permits, a Level Three Corrective Action requires that Wayron: (1) review the SWPPP for the facility and ensure that it fully complies with Condition S3 of the Permits; (2) make appropriate revisions to the SWPPP to include additional treatment BMPs with the goal of achieving the applicable benchmark value(s) in future discharges and additional operational and/or structural source control BMPs if necessary for proper function and maintenance of treatment BMPs; and (3) summarize the Level Three Corrective Action (planned or taken) in the Annual Report required under Condition S9.B of the Permits, including information on how monitoring, assessment, or evaluation information was (or will be) used to determine whether existing treatment BMPs will be modified/enhanced, or if new/additional treatment BMPs will be installed.

Condition S8.D.2.b of the 2010 Permit requires that a licensed professional engineer, geologist, hydrogeologist, or certified professional in storm water quality must design and stamp the portion of the SWPPP that addresses stormwater treatment structures or processes. Condition S8.D.3 of the 2010 Permit requires that, before installing BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, Wayron submit an engineering report, plans, and specifications, and an operations and maintenance manual to Ecology for review in accordance with chapter 173-204 of the Washington Administrative Code. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3 of the 2010 Permit requires that the plans and specifications and the operations and maintenance manual must be submitted to Ecology at least 30 days before construction/installation.

Condition S8.D.2.b of the 2015 Permit requires that a Qualified Industrial Stormwater Professional shall review the revised SWPPP, sign the SWPPP Certification Form, and certify that it is reasonably expected to meet the ISGP benchmarks upon implementation. Additionally, Condition S8.D.3 of the 2015 Permit requires that, before installing any BMPs that require the site-specific design or sizing of structures, equipment, or processes to collect, convey, treat, reclaim, or dispose of industrial stormwater, Wayron submit an engineering report, certified by a licensed professional engineer, to Ecology for review. The report must contain: (1) a brief summary of the treatment alternatives considered and why the proposed option was selected, including cost estimates of ongoing operation and maintenance and disposal of any spent media; (2) the basic design data, including characterization of stormwater influent and sizing calculations for the treatment units; (3) a description of the treatment process and operation, including a flow diagram; (4) the amount and kind of chemicals used in the treatment process, if any; (5) the expected results from the treatment process including the predicted stormwater discharge characteristics; and (6) a statement, expressing sound engineering justification—through the use of pilot plant data, results from similar installations, and/or scientific evidence—that the proposed treatment is reasonably expected to meet the permit benchmarks. The engineering report must be submitted no later than the May 15 prior to the Level Three Corrective Action Deadline. Condition S8.D.3.c of the 2015 Permit requires that an operations

and maintenance manual must be submitted to Ecology at least 30 days after construction/installation of the treatment BMPs is complete.

Condition S8.D.5 of the Permits requires that Wayron fully implement the revised SWPPP according to Condition S3 of the Permits and the applicable stormwater management manual as soon as possible, but no later than September 30th of the following year.

The Permits establish the benchmarks applicable to Wayron described in Section V.A of this Notice of Intent to Sue.

Wayron has violated the requirements of the Permits described above by failing to conduct a Level Three Corrective Action in accordance with applicable permit conditions—including the required review, revision and certification of the SWPPP, including the requirement to have a specified professional design and stamp the portion of the SWPPP pertaining to treatment, the required implementation of additional BMPs, including additional treatment BMPs to ensure that all points of discharge from the facility meet benchmarks (not just the sampled point of discharge), the required submission of an engineering report, plans, specifications, and an operations and maintenance plan, and the required summarization in the annual report—each time since and including 2011, that Wayron's quarterly stormwater sampling results were greater than a benchmark or outside the benchmark range for pH for any three quarters during a calendar year. As indicated in Table 1 in Section II.A of this letter, these violations include, but are not limited to, Wayron's failure to fulfill these obligations for zinc triggered in 2015. Based upon Ecology's October 2016, inspection report, these violations also include Wayron's failure to fulfill these obligations for zinc in triggered in 2013.

The benchmark excursions identified in Table 1 are based upon information currently available to Columbia Riverkeeper from Ecology's publicly available records. Columbia Riverkeeper provides notice of its intent to sue Wayron for failing to comply with all of the Level Three Corrective Action requirements each and every time quarterly stormwater sample results exceeded an applicable benchmark value or were outside the benchmark range for pH for any three quarters during a calendar year, including any such excursions that are not discussed herein, since and including 2011.

Condition S8.D.5.e of the 2015 Permit states "For the year following the calendar year the Permittee triggered a Level 3 corrective action, benchmark exceedances (for the same parameter) do not count towards additional Level 2 or 3 Corrective Actions." *See also* 2010 Permit, Condition S8.D.5.d (same). These Conditions do not waive Wayron's duty to prepare Level Three Corrective Actions because Wayron failed to develop and implement Level Three Corrective Actions pursuant to Condition S8.D of the Permits.

VI. VIOLATIONS OF THE ANNUAL REPORT REQUIREMENTS.

Condition S9.B of the Permits requires Wayron to submit an accurate and complete annual report to Ecology no later than May 15 of each year. The annual report must include corrective action documentation as required in Condition S8.B through S8.D. If a corrective action is not yet completed at the time of submission of the annual report, Wayron must describe

the status of any outstanding corrective action. Each annual report must: (1) identify the conditions triggering the need for corrective action review; (2) describe the problem and identify the dates when the problem was discovered; (3) summarize any Level 1, 2, or 3 Corrective Actions completed during the previous calendar year and include the dates those corrective actions were completed; and (4) describe the status of any Level 2 or 3 corrective actions triggered during the previous calendar year, and identify the date Wayron expects to complete those corrective actions. Wayron has violated this condition by failing to submit complete and accurate annual reports within the time prescribed for each year since and including 2011.

Wayron's 2011 annual report was not timely submitted, does not identify the conditions triggering the need for Level One Corrective Action for zinc, fails to identify the problems and the dates when they were discovered with respect to the exceedances of the zinc benchmark, and does not describe correction actions taken in response to the Level One Corrective Action triggered for zinc (e.g., it does not describe additional operation source control BMPs implemented or the dates such measures were implemented).

Wayron's 2012 annual report does not identify the conditions triggering the need for Level One Corrective Action for zinc and does not describe correction actions taken in response to the Level One Corrective Action triggered for zinc (e.g., it does not describe additional operation source control BMPs implemented or the dates such measures were implemented).

Wayron has failed to submit annual reports for 2013, 2014, and 2015.

VII. VIOLATIONS OF THE RECORDKEEPING REQUIREMENTS.

A. Failure to Record Information.

Condition S4.B.3 of the 2010 Permit requires Wayron to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if Wayron collected the sample within the first 30 minutes of stormwater discharge event, an explanation of why Wayron could not collect a sample within the first 30 minutes of a stormwater discharge event, the sample location, method of sampling and of preservation, and the individual performing the sampling. Condition S4.B.3 of the 2015 Permit requires Wayron to record and retain specified information for each stormwater sample taken, including the sample date and time, a notation describing if Wayron collected the sample within the first 12 hours of stormwater discharge event, an explanation of why Wayron could not collect a sample within the first 12 hours of a stormwater discharge event, the sample location, method of sampling and of preservation, the individual performing the sampling, and the weather conditions. Upon information and belief, Wayron is in violation of these conditions as it has not recorded each of these specified items for each sample taken during the last five years.

B. Failure to Retain Records.

Condition S9.C of the Permits requires Wayron to retain for a minimum of five years a copy of the Permits, a copy of Wayron's permit coverage letters, records of all sampling information, inspection reports including required documentation, any other documentation of

compliance with permit requirements, all equipment calibration records, all BMP maintenance records, all original recordings for continuous sampling instrumentation, copies of all laboratory results, copies of all required reports, and records of all data used to complete the application for the Permits. Upon information and belief, Wayron is in violation of these conditions because it has failed to retain records of such information, reports, and other documentation during the last five years.

VIII. REQUEST FOR SWPPP.

Pursuant to Condition S9.F of the 2015 Permit, Columbia Riverkeeper hereby requests that Wayron provide a copy of, or access to, the SWPPP for the facility complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to Brian A. Knutsen at the address provided below.

Should Wayron fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the 2015 Permit, it will be in violation of that condition, which violation shall also be subject to this Notice of Intent to Sue and any ensuing lawsuit.

IX. PARTY GIVING NOTICE OF INTENT TO SUE.

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper
111 Third Street
Hood River, Oregon 97031
(541) 387-3030

X. ATTORNEYS REPRESENTING RIVERKEEPER.

The attorneys representing Columbia Riverkeeper in this matter are:

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
833 S.E. Main Street, No. 318
Portland, Oregon 97214
(503) 841-6515
brian@kampmeierknutsen.com

Lauren Goldberg, Staff Attorney (Licensed in Oregon)
Columbia Riverkeeper
111 Third Street
Hood River, Oregon 97031
(541) 965-0985
lauren@columbiariverkeeper.org

XI. CONCLUSION.

The above-described violations reflect those indicated by the information currently available to Columbia Riverkeeper. These violations are ongoing. Columbia Riverkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day for each violation. In addition to civil penalties, Columbia Riverkeeper will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Columbia Riverkeeper believes that this Notice of Intent to Sue sufficiently states grounds for filing suit. Columbia Riverkeeper intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Wayron, LLC under Section 505(a) of the Clean Water Act for the violations described herein.

Columbia Riverkeeper is willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within ten (10) days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By: 

Brian A. Knutsen

cc: Regina McCarthy, Administrator, U.S. EPA
Dennis McLerran, Region 10 Administrator, U.S. EPA
Maia Bellon, Director, Washington Department of Ecology
Kevin D. Rahn, Registered Agent

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of Washington State and the United States that I am counsel for Columbia Riverkeeper and that on November 21, 2016, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act and Request for Stormwater Pollution Prevention Plan to be served on the following by depositing it with the United States Postal Service, certified mail, return receipt requested, postage prepaid:

Managing Agent
Wayron, LLC
1133 California Way
Longview, Washington 98632

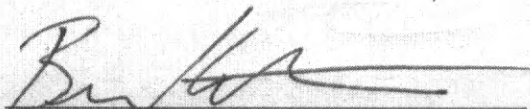
Managing Agent
Wayron, LLC
P.O. Box 1159
Longview, Washington 98632

Administrator Regina A. McCarthy
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W., Mail Code 1101A
Washington, D.C. 20460

Director Maia D. Bellon
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Regional Administrator Dennis J. McLerran
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code RA-210
Seattle, WA 98101

Kevin D. Rahn
Registered Agent for Wayron, LLC
1315 14th Ave.
Longview, Washington 98632


Brian A. Knutsen